

EXHIBIT B

EXHIBIT B

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15 *Attorneys for Defendants*

11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF NEVADA**

14
15 JAMES V. DEPPOLETO JR.,
16 Plaintiff,

17
18 v.

19
20 TAKEOVER INDUSTRIES,
21 INCORPORATED, *et al.*
22 Defendant.

Case NO. 2:22-cv-02013-GMN-BNW

**DEFENDANTS' SEVENTH
SUPPLEMENT TO INITIAL FRCP 26(A)
DISCLOSURES**

23
24 Defendants, TAKEOVER INDUSTRIES INCORPORATED, MICHAEL HOLLEY,
25 TOM ZARRO, JOE PAVLIK, TOBY MCBRIDE and NEXTGEN BEVERAGES, LLC
26 (collectively "Defendants"), by and through their counsel of record, the law office of S. Don
27 Bennion, hereby provide their Seventh Supplement to Initial Disclosures pursuant to Rule
28

1 26(a) of the Federal Rules of Civil Procedure in this matter as follows: **(supplemental material**
2 **in bold)**

3
4 I.

5 WITNESSES

6 Defendant discloses the following witnesses who may have discoverable information,
7 with their address and telephone, if known, that Defendant may use to supports its claims and
8 defenses:

9
10 1. James V. Deppoleto, Plaintiff
11 c/o SHEA LARSEN
12 1731 Village Center Circle, Suite 150
13 Las Vegas, NV 89134

14 and

15 c/o HUSCH BLACKWELL LLP
16 190 Carondelet Plaza, Suite 600
17 St. Louis, MO 63105

18 Mr. Deppoleto is the Plaintiff in this matter. It is expected that Mr. Deppoleto will
19 testify as to the allegations in the complaint and the facts and circumstances related to those
20 allegations and the claims he is making.

21 2. FRCP 30(b)(6) Representative for
22 Takeover Industries Incorporated
23 c/o Kurt R. Bonds, Esq.
24 Hall & Evans, LLC
25 1160 North Town Center Drive, Suite 330
26 Las Vegas, Nevada 89144
27 (702) 998-1022

28 Takeover Industries Incorporated is a Defendant in this matter. It is expected that a
corporate representative for Takeover Industries Incorporated will be designated and testify as
to the facts and circumstances alleged in the complaint and any affirmative defenses asserted by
Defendants.

1 3. Michael Holley
2 c/o Kurt R. Bonds, Esq.
3 Hall & Evans, LLC
4 1160 North Town Center Drive, Suite 330
5 Las Vegas, Nevada 89144

6 Mr. Holley is a Defendant in this matter. It is expected that he will testify as to the facts
7 and circumstances alleged in the complaint and any affirmative defenses asserted by
8 Defendants.

9 4. Tom Zarro
10 c/o Kurt R. Bonds, Esq.
11 Hall & Evans, LLC
12 1160 North Town Center Drive, Suite 330
13 Las Vegas, Nevada 89144
14 (702) 998-1022

15 Mr. Zarro is a Defendant in this matter. It is expected that he will testify as to the facts
16 and circumstances alleged in the complaint and any affirmative defenses asserted by
17 Defendants.

18 5. FRCP 30(b)(6) Representative for
19 NextGen Beverages, LLC
20 c/o Kurt R. Bonds, Esq.
21 Hall & Evans, LLC
22 1160 North Town Center Drive, Suite 330
23 Las Vegas, Nevada 89144
24 (702) 998-1022

25 NextGen Beverages, LLC is a Defendant in this matter. It is expected that a corporate
26 representative for NextGen Beverages, LLC will be designated and testify as to the facts and
27 circumstances alleged in the complaint and any affirmative defenses asserted by Defendants.

28 6. Toby McBride
 c/o Kurt R. Bonds, Esq.
 Hall & Evans, LLC
 1160 North Town Center Drive, Suite 330
 Las Vegas, Nevada 89144
 (702) 998-1022

1 Mr. McBride is a Defendant in this matter. It is expected that he will testify as to the
2 facts and circumstances alleged in the complaint and any affirmative defenses asserted by
3 Defendants.
4

5 7. Joseph Pavlik
6 c/o Kurt R. Bonds, Esq.
7 Hall & Evans, LLC
8 1160 North Town Center Drive, Suite 330
9 Las Vegas, Nevada 89144
10 (702) 998-1022

11 Mr. Pavlik is a Defendant in this matter. It is expected that he will testify as to the facts
12 and circumstances alleged in the complaint and any affirmative defenses asserted by
13 Defendants.
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15 8. Jason Tucker
16 Condominio defines department 30 302 Retorno Veracruz SN Nayarit
17

18 This witness is a past president of Takeover and is expected to testify as to facts and
19 circumstances related to the allegations in the complaint, Plaintiff's alleged loans to Takeover,
20 and facts and circumstances relevant to Defendants' affirmative defenses.
21

22 9. Melissa Tucker
23

24 This witness was formerly on Takeover's payroll and is expected to testify as to facts
25 and circumstances related to the allegations in the complaint, Plaintiff's alleged loans to
26 Takeover, and facts and circumstances relevant to Defendants' affirmative defenses.
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28 10. Mike Tzanetatos
c/o Takeover Industries
25177 Cypress Bluff Drive
Santa Clarita, CA 91387

1 This witness is a former sales rep of Takeover and is expected to testify as to facts and
2 circumstances related to the allegations in the complaint, Plaintiff's alleged loans to Takeover,
3 and facts and circumstances relevant to Defendants' affirmative defenses.
4

5 11. Mike Costello
6 c/o Takeover Industries
7 431 Traube Ave.
8 Clarendon Hills, IL 60514

9 This witness is a former sales rep of Takeover and is expected to testify as to facts and
10 circumstances related to the allegations in the complaint, Plaintiff's alleged loans to Takeover,
11 and facts and circumstances relevant to Defendants' affirmative defenses.
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13 12. FRCP 30(b)(6) Representative for
14 Quintec Integration, Inc.
15 1600 paramount Drive Waukesha, WI 53186
16 262-200-1678
17 Quinteconveyor.com

18 This witness is expected to testify as to facts and circumstances related to the
19 allegations in the complaint, Plaintiff's alleged loans to Takeover, the source of those funds,
20 and facts and circumstances relevant to Defendants' affirmative defenses.
21

22 13. Amy Allen c/o Quintec Integration, Inc.
23 1600 paramount Drive Waukesha, WI 53186
24 262-200-1678
25 Quinteconveyor.com

26 This witness is a former employee of Quintec Integration, Inc., who worked with
27 Plaintiff and witness Jason Tucker. Ms. Allen is expected to testify as to facts and
28 circumstances related to the allegations in the complaint, Plaintiff's alleged loans to Takeover,
and facts and circumstances relevant to Defendants' affirmative defenses.

1 Defendants reserve the right to call any and all other witnesses identified by any other
2 party to this litigation in their FRCP 26(a) disclosures and all supplements thereto.
3 Furthermore, discovery is ongoing in this matter and Defendants reserve the right to
4 supplement and amend this list of witnesses as additional information is discovered.
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6 II.

7 DOCUMENTS

8 Defendants identify the following documents that may be relevant to the allegations in
9 this litigation and that Defendants may use to supports their claims and defenses:
10

11 1. Resolution of the Board of Directors of Labor Smart Inc., dated November 7,
12 2022 [DEF00001-DEF00005];

13 2. Written Consent – Board of Directors of Takeover Industries, Inc, dated
14 November 7, 2022 [DEF00006-DEF00008];

15 3. Written Consent – Board of Directors of Takeover Industries, Inc, dated
16 November 7, 2022 [DEF00009-DEF00011];

17 4. Bank Statements 2022-2023 [DEF00012-DEF00335];

18 5. Takeover Balance Sheet 2021 [DEF00336];

19 6. Takeover Profit and Loss 2021 [DEF00337];

20 7. Takeover Balance Sheet 2022 [DEF00338];

21 8. Takeover Profit and Loss 2022 [DEF00339];

22 9. General Ledger 2023 [DEF00340-DEF00419];

23 10. Resolution of the Board of Directors 1.24.23 [DEF00420];

24 11. Resolution of the Takeover Board 4.17.23 [DEF00421-DEF00422];

25 12. LTNC Demand Letter 1-22-2023 [DEF00423-DEF00445];
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- 1 13. Tom Zarro LTNC Subscription Agreement 3-23-23 [DEF00446-DEF00461];
- 2 14. Tom Zarro Wells Fargo Bank Statement December 31, 2022 [DEF00462];
- 3 15. Term Sheet Takeover & Boost [DEF00463];
- 4 16. Correspondence from Jeff Whitehead to Michael Brandess [DEF00464-
- 5 DEF00465];
- 6 17. Convertible Note Purchase Agreement [DEF00466-DEF00481];
- 7 18. Correspondence with Bryan Calka re: PFL [DEF00482-DEF00486];
- 8 19. Various Wire Statements [DEF00487-DEF00492];
- 9 20. PPM Labor Smart and Zarro [DEF00493-DEF00508];
- 10 21. Zarro-NextGen Investment Transaction Details Receipt [DEF00509];
- 11 22. Bank statements 2024 [DEF00510-DEF00521];
- 12 23. Jason Tucker-Battleship Invoice [DEF00522];
- 13 24. Melissa Tucker-Blue Butterfly Digital Invoice [DEF00523];
- 14 25. JBB Media Group LLC Invoice [DEF00524];
- 15 26. Payroll Payments [DEF00525-DEF00526];
- 16 27. Minutes of Special Meet of Directors 12.8.21 [DEF00527];
- 17 28. Email correspondence between Tom Zarro and Jason Tucker re: Zarro Note [
- 18 DEF00528-DEF00533];
- 19 29. Various Email Correspondence between Tom Zarro, Jason Tucker, Michael
- 20 Brandess and James Deppoleto, Jr. [DEF00534-DEF00546];
- 21 30. Email correspondence between Tom Zarro and Jason Tucker re: Note Payments
- 22 and Deppoleto [DEF00547-DEF00548];
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1 31. Email Correspondence between Tom Zarro, Jason Tucker and Toby McBride re:
2 Payments on Note [DEF00549-DEF00550];

3 32. DocuSign Email Correspondence from Jason Tucker to Tom Zarro [DEF00551-
4 DEF00559];

5 33. Email Correspondence between Tom Zarro and Jason Tucker re: Payments on
6 Note [DEF00560-DEF00561];

7 34. Email Correspondence between Tom Zarro and Jason Tucker re: Payments on
8 Note [DEF00562-DEF564];

9 35. Email Correspondence between Jason Tucker and Kerby Fortner re: Deppoleto
10 Note [DEF00565-DEF00566]

11 36. Email Correspondence from Toby McBride to Mike Tzanetatos re: Termination
12 of Employment [DEF00567];

13 37. Email Correspondence between Mike Holley and Tom Zarro re: PPM with
14 Attachment [DEF00568-DEF00584];

15 38. Email Correspondence between Jason Tucker and Amy Allen re: Takeover
16 Payroll [DEF00585-DEF00588];

17 39. Email Correspondence between Toby McBride, Joe Pavlik and Jason Tucker e:
18 Takeover Social Media Login Information [DEF00589-DEF00590];

19 40. NextGen Beverage Insurance Documents [DEF00591-DEF00688];

20 41. NextGen Beverage Bank Records June 2023-October 2024 [DEF00689-
21 DEF00803];

22 42. NXT LVL Brand Partnership Investor Funding Pitchdeck [DEF00804-
23 DEF00824];

- 1 43. Family Dollar Invoice [DEF00825];
- 2 44. Settlement Agreement [DEF00826-DEF00835];
- 3 45. Bylaws re: Takeover Industries, Inc. [DEF00836-DEF00869];
- 4 46. License Agreement between Toby McBride and Tom Zarro [DEF00870-
- 5 DEF00872];
- 6 47. NXT LVL/ 5 Hr. Energy Accelerator Partnership [DEF00873];
- 7 48. Emails between Amy Allen, Jason Tucker and James Deppoleto, Jr.
- 8 [DEF00874-DEF00882];
- 9 49. Email between Jason Tucker, Eric Bjorgum, Melissa Tucker and James
- 10 Deppoleto, Jr. [DEF00883-DEF00884];
- 11 50. Email correspondence documents [DEF00885-DEF00898];
- 12 51. Convertible Note Purchase Agreement [DEF00899-DEF00918]
- 13 52. Bylaws of Takeover Industries, Inc. [DEF00919- DEF 01080]
- 14 53. James L. Deppoleto, Jr. social media post July 12, 2022 [DEF01081]
- 15 54. JBB Media Group LLC receipts dated [DEF01082-DEF01087]
- 16 July 15, 2022 and September 14, 2022
- 17 55. NXT LVL Gamer Shots *Stipulation* [DEF01088 to DEF01006]
- 18 (subject to pending ~~Motion~~ For Protective Order)
- 19 56. Email correspondence [DEF01107 to DEF01112]
- 20 (subject to pending Stipulation and Order
- 21 for Protective Order)
- 22 57. Partner Presentation [DEF01113 to DEF01135]
- 23 (subject to pending Stipulation and Order
- 24 for Protective Order)
- 25 58. Private Placement Agreement Tom Zarro [DEF01136 to DEF01263]
- 26 59. Bill Invoices [DEF01264 to DEF01268]
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|-----|---|---------------------|
| 60. | Monthly Salary and Outside Contractor Expenses | [DEF01269] |
| 61. | Abomb99 post re: J. Deppoleto | [DEF01270] |
| 62. | Loan Agreements re: Takeover and NextGen | [DEF01271-DEF01280] |
| 63. | NextGen Balance Sheets | [DEF01281-DEF01290] |
| 64. | Nootropics documents | [DEF01291-DEF01293] |
| 65. | T-Pain Agreement | [DEF01294-DEF01300] |
| 66. | TKO Inventory Value 12-5-22 | [DEF01301] |
| 67. | Tom Zarro Mutual Non-Disclosure Agreement
(subject to pending Stipulation and Order for
Protective order) | [DEF01302-DEF01303] |

Defendants reserve the right to use any and all other documents identified by any other party to this litigation in their FRCP 26(a) disclosures and all supplements thereto. Furthermore, discovery is ongoing in this matter and Defendants reserve the right to supplement and amend this list of documents as additional information is discovered.

III.

TANGIBLE ITEMS

Defendants hereby describe and identify the tangible items or things in their possession which are relevant to this lawsuit as follows:

See documents identified as DEF00001-DEF01080.

Defendants reserve the right to (1) supplement this list of tangible items as discovery continues, and (2) use any tangible items disclosed by any other party to this litigation.

IV.

INSURANCE AGREEMENTS

Defendants hereby identifies the following insurance agreements for possible coverage:

See DEF00591-DEF00688 produced December 6, 2024.

Defendants reserve the right to supplement this list as discovery continues.

V.

COMPUTATION OF DAMAGES

Defendants have been damaged by attorney's fees and costs in an amount to be determined.

VI.

PRIVILEGE LOG

Following is a list identifying documents withheld from production, by virtue of privilege, that may have been responsive to certain documents requests from Plaintiff, as more fully stated therein:

DOCUMENT REQUEST NO.	DESCRIPTION	PRIVILEGE/PROTECTION CLAIMED
See privilege log provided		

DATED this 31st day of December 2024.

Law Office of S. Don Bennion

/s/ S. Don Bennion, Esq.

S. Don Bennion, Esq.

Nevada Bar No. 4530

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5 Whitehead & Burnett

6 /s/ Jeffrey J. Whitehead, Esq.
7 Jeffrey J. Whitehead, Esq.
8 Nevada Bar No. 3183
9 Whitehead & Burnett
6980 O'Bannon Drive
Las Vegas, Nevada 89117
10 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

On December 31, 2024 I served the following document(s):

1. The document(s) were served by the following means to the person(s) as listed below:

DEFENDANTS' SEVENTH SUPPLEMENT TO INITIAL FRCP 26(A)

DISCLOSURES

☐ a. ECF System

And all other parties requesting notice.

☐ b. US mail, postage prepaid

☐ c. Personal Service:

☒ d. By direct email (as opposed to the ECF system): Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the person(s) at the email addresses listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

James Patrick Shea, Esq.

Nevada Bar No. 405

Bart K. Larsen, Esq.

Nevada Bar NO. 8538

Kyle M. Wyant, Esq.

Nevada Bar No. 14652

SHEA LARSEN

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Attorneys for Defendants

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Admitted Pro-Hac Vice

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1 T: 314-480-1500
2 Jennifer.hoekel@huschblackwell.com
3 *Attorney for Plaintiff*

T: 414-273-2100
Patrick.Harvey@huschblackwell.com
Attorney for Plaintiff

4 ☐ e. By fax transmission

5 Based upon the written agreement of the parties to accept service by fax transmission
6 or a court order, I faxed the document(s) to the person(s) at the fax numbers listed below. No
7 error was reported by the fax machine that I used. A copy of the record of the fax transmission
8 is attached.

9 ☐ f. By messenger

10 I served the document(s) by placing them in an envelope or package addressed to the
11 person(s) at the addresses listed below and providing them to a messenger for service.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 /s/ S. Don Bennion, Esq
14 Law Office of S. Don Bennion
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